COOK

History of the Lecompton Constitution

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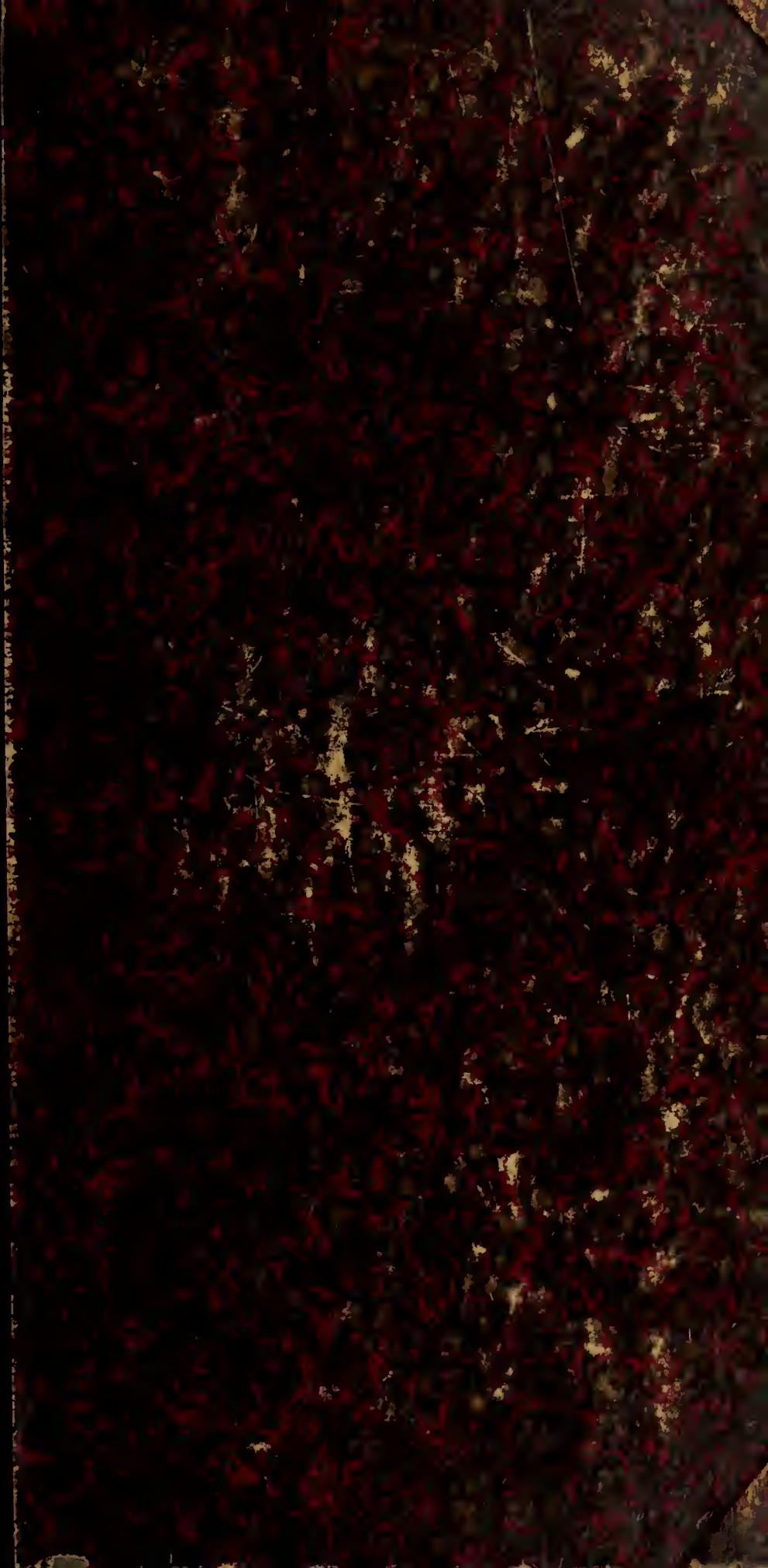

HISTORY

of the

LECOMPTON CONSTITUTION.

By

William Adelbert Cook.

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in

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Prefatory Note.

The subject of this investigation is an episode in the territorial history of Kansas. From 1854 to 1860 that Territory was the center of national interest for the greater part of the time. The bitterness of the struggle resulted in many perversions of fact and actual falsifications. An immense amount of historical material bearing on this period is in print, but the greater part of it is found in newspapers and speeches in Congress, and is therefore often very unreliable. Undoubtedly material containing the truth is still extant, but the difficulty is to separate it from the untrue. As yet but few efforts have been made to meet this obstacle. Sectional feeling should have long ago disappeared from all fair minds, and we shall address ourselves to this research with a determination to be as impartial as the natural hindrances of the situation will permit.

W. A. Cook.

University of Illinois,
Urbana, Ill., May, 1902.

C O N T E N T S .

C H A P T E R I.

The Calling of the Convention.

When the Kansas-Nebraska Bill was passed in 1854, its purpose was understood to be the banishment from the halls of Congress of that portentous sectional issue, which had kept our national legislature in a turmoil intermittently for the preceding thirty-five years. It was believed that the aggravating question of slavery could be settled by the actual residents of the Territories of Kansas and Nebraska with less dangerous excitement and controversy, than by the Federal Congress itself. The Lecompton constitution is but one link in the application of this famous doctrine of "squatter sovereignty".

That serious difficulties must inevitably arise in administering Douglas' pet scheme, it did not require long to demonstrate. In the latter part of November, 1854 an election was held to choose a Territorial delegate to Congress. The organization of the Emigrant Aid Company by the anti-slavery interests of the Northeast had been met by a counter-move in the establishment of the well-known Blue Lodges on the part of the pro-slavery inhabitants of western Missouri. Now on November 29, 1854 the members of the Blue Lodges crossed the Kansas border in large numbers to assist the pro-slavery party of that Territory in the election of J. W. Whitfield as a delegate. This defeat was not regarded very seriously by the free-State men, who looked forward with far greater interest to the selection of a Territorial Legislature, which had been fixed for

March 30, 1855. On that day five thousand Missourians, armed to the teeth, invaded Kansas. It is unnecessary for our purpose to enter upon the details of this affair. The Republican voters were intimidated or driven from the polls, and a pro-slavery Legislature was put in power. The character of the government, which the men thus fraudulently installed in office offered, needs no elucidation; nor is comment called for with regard to the attitude of distrust which free-State men would naturally maintain toward such a government and the administration at Washington which recognized its legality.

In the midst of their wholesale enactment of undemocratic, vicious, pro-slavery legislation, these law-makers in Kansas paused to take the first step in the creation of the Lecompton constitution. According to President Buchanan's special message to Congress on February 2, 1858, the Territorial Legislature passed a law in 1855 "for taking the sense of the people of this Territory upon the expediency of calling a convention to frame a state constitution", at the general election to be held in October, 1856. (1). That action of this character was taken so prematurely (2) certainly gives some strength to the suspicion that the whole subsequent course of events, as was afterwards charged in Congress, was deliberately concocted in advance by the slavery party.

Considerable dispute later arose as to the fairness of the election in October, 1856 on the question of calling a constitution-

(1). Cong. Globe, 1 session, 35 Congress, 534.

(2). Burnett, in H. of R., Cong. Globe, 1 session, 35 Cong.,1278.

al convention. Governor Geary tells us that 4276 votes were given for Whitfield as delegate to Congress and 2670 votes for the convention(1). Wilder, however, gives 2592 for the convention and 454 against it (2). It is impossible to tell which figures are correct, but so slight a discrepancy is of small importance, for it plainly appears that an overwhelming majority of those voting on the question favored a convention. Representative Crow of Pennsylvania, Senators Collamer of Vermont and Fessenden of Maine alleged that the odious test oaths in force prevented the free-State men from voting against the convention. Grow even suggests this as a cause for the difference between the vote for the convention and for the delegate (3). This was obviously an assumption that the test oaths in question did not apply to those voting for the delegate. No authority was given as the basis of such an assumption, and the very inconsistency of the arrangement creates a presumption against its existence. There is no doubt that many of the anti-slavery settlers could not have conscientiously taken the various test oaths, among which was a promise to support the fugitive slave law (4); but Buchanan was probably about right when he declared that "at this election the enemies of the territorial government did not vote, because they were then engaged at Topeka, in framing a constitution of their own" (5). While the action of the Legislature in the

(1). Transactions of Kan. Hist. Soc., IV, 719.

(2). Wilder, 110.

(3). Cong. Globe, 1 session, 35 Congress,1334.

(4). Fessenden in Senate, Cong. Globe, 1 session, 35 Cong.,610.

(5). Buchanan's Annual Message, Dec.,1857.

~~in the~~ imposition of test oaths is indefensible, it seems unlikely that the Topekaites felt the wrong very deeply. The Kansas Herald, a free-State paper, stated that there was no opposition to the calling of the convention(1); and from the official papers of Governor Geary we learn that the question of a state government entered but little into the canvas, and that the small vote polled for a convention was significantly indicative of the "popular indifference" on the subject, even in the pro-slavery party, (2). This appears to offer the most reasonable explanation of the difference in the votes for the convention and the delegate.

In obedience to the "sense of the people" as shown in the October election, an act was passed by the Legislature in the early part of 1857, providing for the desired constitutional convention (3). "This law was in the main fair and just", wrote Buchanan (4). At first sight the impartial observer, glancing through it and knowing little of the previous history of Kansas, might have agreed with the President; an extended examination, however, reveals more than one flaw. It required a census of all free male inhabitants of the Territory over twenty-one years of age to be taken between March 1 and April 1, 1857 by the sheriffs of the respective counties. In case of a vacancy this duty was to devolve on the probate judge. The list of voters must be filed in the office of the probate judge

(1). Peyton in H. of R., Cong. Globe, 1 session, 35 Cong., 1331.

(2). Trans. of Kan. Hist. Soc., IV, 719.

(3). Anderson in H. of R., Cong. Globe, 1 Sess., 35 Cong., 420-1.

(4). Cong. Globe, 1 Sess., 35 Cong., Appendix, 4.

of each county on or before April 10 and posted in three of the most public places in each election district. The said probate judge was then to remain in session each day from the time of receiving the returns until May 1 to hear and determine all questions concerning the improper omission or insertion of names in the list. Immediately after full revision or correction one copy should be sent to the Governor and another to the Secretary of the Territory. The Governor should provide each judge of election with a copy, post up three copies at each place of voting, and distribute them among the people. The judges and clerks of election must be sworn, duplicate returns of the poll-books made out and certified by the judges and clerks, -- one deposited with the board of county commissioners, and the other transmitted to the Secretary of State. Every bona fide inhabitant of the Territory on the third Monday in June, 1857, being a citizen of the United States and over the age of twenty-one years, and a resident for the preceding three months in the county where he offered to vote, was entitled to the suffrage. Punishment was prescribed for unlawfully influencing any one at the polls or deterring any one from voting, also for committing any fraud or irregularity with intent to hinder, prevent, or defeat a fair expression of the popular will. Leidy, a Pennsylvania Democrat, stated that it gave the Governor power to apportion the sixty delegates among the several counties and divided the Territory into nineteen election districts (1). Senator Stuart of Michigan, on the other hand, quoted Governor Walker to the effect that thirty-

(1). Cong. Globe, 1 session, 35 Cong., Appendix, 257.

four regularly organized counties were named in this act as election districts for delegates, (1). From the census returns which will be considered later it appears that there were nineteen districts. Just what the act itself may have provided for can not be positively determined, since the text of it is not available. The delegated power of the convention, "to form a constitution and state government for admission into the Union," was conveyed by Section 16 of the act of the Legislature(2).

In the first place we may note that the suffrage qualification imposed was radically unfair. With the opening of spring there was the usual large annual immigration from the Northern states (3), and the residence requirement of three months was just long enough almost entirely to disfranchise these persons. It can hardly be maintained that the Legislature was so ignorant as not to have perceived this fact when it passed the Convention Act.

A second defect existed with regard to the election and apportionment of delegates. It is rendered very obvious by a comparison of this Convention Act with the Toombs bill which was passed by the Senate in the spring of 1856 but defeated in the House of Representatives. Its purpose was to enable the people of Kansas to form a state constitution, and its similarity to the Convention Act of the Legislature was afterwards brought up in Congress as a just-

(1). Cong. Globe, 1 session, 35 Cong., 159.

(2). Wortendyke in H. of R., Cong. Globe, 1 Sess., 35 Cong.,1287.

(3). Von Holst, VI, 63.

ification of the latter (1). Governor Geary, however, at once perceived that "in several respects it (the bill of the Kansas Legislature) differs from the Toombs bill; and in these particulars it does not furnish equal guarantees for fairness and impartiality" (2). The Toombs bill secured the appointment of five impartial commissioners to take and correct the census, to make a proper apportionment among the several counties, and generally to superintend all the preliminaries so as to secure a fair election; while the act of the Legislature left all these important duties to be performed by probate judges and sheriffs, elected by and owing allegiance to a party. They were the appointees of the ring which came into power in 1855, and could scarcely have been depended upon to execute fairly any law either good or bad. The manner in which their duties were discharged in this specific instance will be noticed hereafter.

A third defect that later gave rise to almost unending controversy was the absence of any provision for the submission of the constitution to a popular vote. Upon ascertaining the nature of the bill Geary sent for the chairmen of the committees of the two branches of the Legislature by whom it had been reported, and informed them that if they would consent to a clause referring the constitution to the citizens of the Territory, he would give it his approval (3); but they replied that the bill met the approbation of their friends at the South, that it was not their intention the

(1). Hughes in H. of R., Cong. Globe, 1 session, 35 Cong., 540.

(2). Trans. of Kan, Hist Soc., IV, 720.

(3). Morse in H. of R., Cong, Globe,1 Sess,, 35 Cong.,App., 313.

constitution should ever be submitted to the people(1). In spite of a pro-slavery convention held in January, 1857, at which the leading members of the party, among whom were Tebbs, Stringfellow, and Whitfield, declared it as their opinion that the adherents of slavery were in a hopeless minority, in spite of the fact that nineteen of the twenty Southern papers in the Territory agreed after January, 1857 that there was no hope of bringing Kansas in as a slave state(2), it now became plain that the struggle would be continued by the old methods of fraud. An extract from the Missouri Democrat of March 13, 1857 shows that the public also appreciated the various faults of this act together with its sole purpose (3). Accordingly Geary was compelled on February 18 to send in his veto message, Passing over other objections, such as the expediency of throwing off the territorial condition while the population was so sparse and poor, he directed the Legislature's attention to a "material omission" in the bill, saying, "I refer to the fact that the Legislature has failed to make any provision to submit the constitution, when framed, to the consideration of the people for their ratification or rejection. The position that a convention can do no wrong, and ought to be invested with soverein power, and that its constituents have no right to judge of its acts, is extra-

(1). Wilson in Senate, Cong. Globe, 1 Sess., 35 Cong., 546.

(2). Bell in Senate, Ibid., Appendix, 136, 137.

(3). Robinson, 344.

ordinary and untenable" (1). The response was the passage of the act over the veto by a vote of 11 to 0 on the part of the Council and the necessary two-thirds vote by the House of Representatives on February 19, 1857(2).

(1). Trans. of Kan. Hist. Soc., IV, 717.

(2). Wilder, 115.

C H A P T E R II.

The Election of the Convention.

On March 4, 1857 Governor Geary sent in his resignation to take effect March 20 (1). The closing days of his administration were characterized by increasing turbulance. His health was rapidly failing (2), and his unpopularity, leading to frequent insults by inhabitants of the capital, Lecompton, a strong pro-slavery town, caused him to be apprehensive for his personal safety (3). Accordingly he left the Territory during the night of March 10, 1857 (4).

The choice of a successor by President Buchanan fell upon Robert J. Walker (5), a Pennsylvanian by birth, who had, however, by long residence in Mississippi become thoroughly Southern in his sympathies. He was an able man, having represented his adopted state in the Senate, and filled the office of Secretary of the Treasury under Polk. Altogether loyal to slavery, he was yet pre-eminently a man of strong moral and political principle (6). After considerable hesitation Walker accepted the nomination and soon be-

(1). Trans. of Kan. Hist. Soc., IV, 737.

(2). Ibid, 742.

(3). Nicolay and Hay, II, 91.

(4). Spring, 208.

(5). Von Holst, VI, 61.

(6). Ibid, 62.

came Governor of the Territory of Kansas. His Secretary, Frederick P. Stanton, was an able young Tennessean, who had served ten years in Congress, and in character was somewhat similar to Walker (1). Stanton arrived first in the Territory about April 20 (2).

Coming now to a consideration of the execution of the law of February 19, 1857, we are face to face with the most perplexing question of this whole investigation: it is to ascertain the defects of the census and explain their causes. The large amount of shrewd lying regarding this matter makes careful discrimination necessary in coming to any conclusion. Citations of good authority must be our chief dependence. Buchanan, whom we can surely say was not unfriendly to slavery, admitted that from circumstances which he "need not detail", there was an omission to register the comparatively few voters who were inhabitants of certain counties of Kansas in the early spring of 1857 (3). As long as so many accusations and complaints were being made with respect to the census, it is inexplicable that he should have thought it "unnecessary to detail" the causes of that omission.

The most satisfactory results will probably be arrived at by looking first at the returns themselves. Of the thirty-seven counties in Kansas, three were totally disregarded in the Convention Act of 1857, and consequently received no place in the census. They were Washington, Clay, and Dickinson (4). Not only is there no

(1). Rhodes, II, 272-73.

(2). Von Holst, VI, 63, note.

(3). Cong. Globe, 1 session, 35 Cong., 534.

(4). Parrott in H. of R., Cong. Globe, 1 session, 35 Cong., Appendix, 295.

proof that these three counties contained any population at that time (1), but at neither the election of December 21, 1857 nor that of January 4, 1858 did they cast a single vote (2). Representative Morse subsequently stated that since these counties had already been organized and county officers appointed, they must have had a population (3). His speech, however, contains other inaccuracies, and for that reason this portion of it can not claim an unqualified acceptance. It seems that several counties in the Territory did not have any officers. Parrott placed the number of such as high as fourteen (4). He also states that Pottawatomie was not mentioned in the act calling the convention, but its appearance in the returns probably indicates an error in his assertion. Secretary Stanton of the Territory in the absence of the Governor issued a proclamation on May 20, 1857, which apportioned the delegates to the convention on the basis of the following returns(5).

(1). Reilly in H. of R., Cong. Globe, 1 session, 35 Cong., 1337.

(2). Wilder, 156,160.

(3). Cong. Globe, 1 session, 35 Cong., APPen., 313.

(4). Ibid, 295.

(5). Wilder, 124.

Census and Apportionment of Delegates Preparatory to Lecompton Convention.

District.	Counties.	No. of legal voters.	Whole population.	No. of Delegates.
1.	Doniphan.	1086	4120	7
2.	Brown. Nemaha.	206 140	--- 512	2
3.	Atchison.	804	2807	5
4.	Leavenworth.	1837	5529	12
5.	Jefferson.	555	----	4
6..	Calhoun.	291	885	2
7.	Marshall.	206	415	1
8.	Riley. Pottawatomie.	353 205	--- 641	4
9.	Johnson.	496	890	3
10.	Douglas.	1318	3727	8
11.	Shawnee. Richardson. Davis.	283 --- ---	--- --- ---	2
12.	Lykins.	413	1352	3
13.	---	---	---	--
14.	---	---	---	--
15.	---	---	---	--
16.	Linn.	413	1821	3
17.	---	---	---	--
18..	Bourbon, McGee, Dorr, Allen.	645	2622	4
19.	---	---	- -	--
	Total.	9251		60

These returns are corroborated by the speeches of Congressmen Reilly of Pennsylvania, a Lecompton Democrat (1), and Morris of Illinois, an anti-Lecompton Democrat (2); they also agree very closely with the evidence of Governor Walker (3) and Senator Wilson of Massachusetts, who was in the Territory during a portion of May and June, 1857 (4). Hence there is no reasonable doubt of their authenticity. But they must be supplemented by a statement from Mr. Reilly of what constituted the 13th, 14th, 15th, 17th and 19th districts according to the Convention Act (1). The 13th district was composed of Franklin county; the 14th, of Weller, Breckinridge, Wise and Madison counties; the 15th, of Butler and Coffee counties; the 17th, of Anderson county; the 19th, of Woodson, Wilson, Codfrey, Greenwood and Hunter counties. These facts completely unmask a most infamous lie with regard to the districting, afterward employed by Polk of Missouri in a debate in the Senate (5). Whether it was really quoted by Polk with intent to deceive we cannot judge. In order to sustain its truthfulness he cited what purported to be Section 34 of the Act of February 19, 1857 (6), but his word cannot balance the combined authority of the administration in Kansas and representatives of both parties in Congress.

(1). Cong. Globe, 1 session, 35 Cong., 1338.

(2). Ibid, 824.

(3). Ibid, 159.

(4). Ibid, 387.

(5). Ibid, 386.

(6). Ibid, 1062.

It appears from these returns that the census of voters was taken in only fifteen, and the population census in only eleven individual counties of the thirty-four mentioned in the act. But in an earlier proclamation of the returns Secretary Stanton gave the same returns for Bourbon county alone that the proclamation of May 20 gave for the whole 18th district (1). It is thus established that in eighteen counties the voters were not enumerated and in twenty-two no population census was taken. It may be asked why the population census does not appear in the other four counties where the census of voters was taken. If the voters of a county could be numbered, why could not the population of that county be found? No answers or even attempts at answers to that question have been offered. In view of both the preceding and subsequent history of Kansas, the most reasonable inference seems to be that some of the above figures were invented by the census officers.

Having ascertained that over one-half the counties were disfranchised, let us examine the reliability of the returns which were made. Sectetary Stanton averred that the registration had been imperfect in all the counties (2). Parrott, later the Territorial delegate to Congress, declared the registration to be "partial, imperfect, and to some extent fraudulent"(3). Senator Henry Wilson, who, although somewhat radical in his ideas, is yet generally sound in

(1). Wilder, 121.

(2). Cong. Globe, 1 session, 35 Cong. , 597.

(3). Ibid, Appendix, 295.

his statement of facts, says: "Thousands were not registered who had a right to be, and thousands were registered who had not that right" (1). "In the town of Lawrence but two or three hundred voters were enrolled although it contained seven or eight hundred. In Topeka containing nearly four hundred voters there was no census at all. In Leavenworth the mayor of the city, one of the oldest residents, was not enrolled" (2). It is of significance that these towns of Lawrence and Topeka were strongly anti-slavery. Governor Robinson's town, Quindaro, was left entirely out of the reckoning (3). Dr. Gihon, private secretary to Geary, testifies that the registration books were carried into Missouri to record names (4). Robinson says that two thousand Missourians were registered as voters in the strong free-State county of Douglas (3). Here again the glaring inaccuracy was forth coming at the very point where it could most likely be utilized. This evidence disposes of the contention that the large registration showed comparatively few voters to be disfranchised (5).

It remains to be seen how many voters resided in the disfranchised counties alone. At the election of a Territorial Legislature in October , 1857 thirteen of these counties polled votes. Throw-

(1). Wilson, Slave Power in America, II, 537.

(2). Wilson in Senate, Cong. Globe, 1Sess.,35 Cong., 387.

(3). Robinson, 345.

(4). Cong. Globe, 1 session, 35 Cong.. 984.

(5). Brown in Senate, Ibid, 551.

ing out 1226 votes given in McGee county, most of which were fraudulent (1). We have 1693 votes as the total cast in the remaining twelve counties (1). On January 4, 1858 only nine of the disfranchised counties polled any vote. Their total was 1816 if we take the largest vote in each on either of the issues involved in that election (2). Governor Denver's result of 1624 (3) must have been secured by taking the total on but one issue, that of the adoption of the constitution. These data may be worth but little, yet they show a strong probability that there were enough voters in the disfranchised counties to have materially influenced the character of the convention. Some other figures are available which, though less impressive, are more conclusive. In the Territorial election of October, 1856 Davis, Franklin and Madison counties polled nearly two hundred votes (4), and this at a time when, as we have seen, the Topeka party refrained from taking any part. Our only absolute judgement on this point, it seems, must be qualitative rather than quantitative.

The next point to consider is the causes of the failure to execute the law in the various counties. Governor Walker asserted that in the disfranchised counties the citizens "did not and (by no fault of their own) could not give a solitary vote for delegates to the convention"(5). He adds: "The sheriffs and probate judges, from

(1). Wilder, 148, 151.

(2). Ibid, 156, 160.

(3). Cong. Globe, 1 session, 35 Cong., 1276.

(4). Wilder, 110.

(5). Cong. Globe, 1 session, 35 Cong., 984.

lack of funds as they alleged, neglected or refused to take any census, or make any registry in these counties" (1). Stanton says this state of affairs arose "from various causes". "In some instances people and officers were alike averse to the proceeding; in others the officers neglected or refused to act; and in some there was but a small population and no efficient organization, enabling the people to secure a representation in the convention" (1). Senator Wilson averred that it was "partly because of neglect of officials, partly because in many counties there were no officials to perform this duty" (2). On the other hand it was generally charged by Southern men that the people of the several counties, not the officers, were at fault. Many persons, it was alleged, refused to tell their names, or gave fictitious ones, or threatened the lives of the census takers (3). It is impossible to substantiate these accusations to any extent. In the case of only one county (Anderson) was there any formal complaint made to the territorial authorities (4). On March 19 George Wilson, probate judge of Anderson County, made an affidavit to the effect that "the disturbed state of the county, and the insurrectionary spirit manifested by some individuals, render it utterly impossible to carry into effect the provisions of the law authorizing the taking of the census of Anderson county. Officers of that county attempting to enforce the laws

(1). Cong. Globe, 1 session, 35 Cong., 388.

(2). Ibid, 387.

(3). Polk in Senate, Ibid, 386.

(4). See "Executive Minutes" of Gov. Geary and Sec. Woodson for March, 1857, Trans. of Kan. Hist. Soc., II, 735-745.

are in the most extreme peril of their lives by so doing. There is no security of the life or property of a pro-slavery man in that part of the country who is known to be such". Upon receipt of this information Secretary Woodson ordered regular troops to the scene of trouble in order to maintain the peace. It is evident that if there was serious opposition among the residents of any other county to the execution of the law, the officers, who had been appointed by the pro-slavery Legislature, erred in not calling for armed assistance to aid in its execution. It is also plain that the almost universal refusal of the Republicans to participate in the registration (1) constituted no reason for the total absence of returns in any county whatever. At least those favoring slavery in each county would have been registered if opportunity had been offered. The conclusion is that the territorial government and its servants were delinquent in the performance of their duty.

It must not, however, be supposed that the anti-slavery party desired very greatly to vote for delegates to the constitutional convention. Active Free-State men in some places made out lists of voters and vainly sought the admission of their delegates elected on those lists to the convention (2), but the party as a whole was bitterly opposed to the entire proceeding. Stanton said, "The great mass of free-State people didn't care a fig whether their names were registered or not" (3). The Topeka government was not

(1). Ready in H. of R., Cong. Globe, 1 session, 35 Cong., App., 824.

(2). Morris in H. of R., Cong. Globe, 1 session, 35 Cong., 824.

(3). Cong. Globe, 1 session, 35 Cong., 996.

yet given up, and they early decided not to go into the election for delegates in June. Three considerations drove them to this decision: first, they did not want to recognize the legality of the Territorial Legislature; second, the Convention Act took all power out of the hands of the people after the delegates were elected; third, the whole machinery of the election lay in the hands of their bitter enemies, with no safeguards interposed for their protection, either in the vote itself or in the subsequent counting of votes. Such was the opinion of Robinson in the latter part of April (1).

Nevertheless, it is not unlikely that the policy announced by Governor Walker on his appearance in the Territory had an additional influence on the course of the Republicans. Walker arrived at Lecompton on May 26, and on the following day his inaugural address was given out (2). In accepting his appointment he had written to Buchanan thus: "I understand that you and all your Cabinet cordially concur in the opinion expressed by me, that the actual bona fide residents of the Territory of Kansas, by a fair and regular vote, unaffected by fraud or violence, must be permitted in adopting their State constitution, to decide for themselves what shall be their social institutions" (3). Consequently, Buchanan's instructions to him in favor of submitting the prospective constitution to the people were expressedin " general and unqualified terms" (4). On his way to Kansas Walker stopped in Chicago to consult

(1). Robinson, 345.

(2). Spring, 213.

(3). Cong. Globe, 1 session, 35 Cong., 1196.

(4). Buchanan's Ann. Messag., Dec., 1857..

with Douglas and to see whether the latter indorsed the policy upon which Buchanan and himself had agreed in respect to the ratification of the constitution; and in order that Douglas might understand precisely what that position was, Walker read the inaugural address to him, as "slightly modified by interlineations in the handwriting of the President himself" (1). That address contained these words: "In no contingency will Congress admit Kansas, as a slave or as a free state unless a majority of the people of Kansas shall first have fairly and freely decided the question for themselves by a direct vote on the adoption of the constitution" (2). In a speech at Lawrence Walker said the constitution when framed should be submitted to a fair vote of the people for adoption or rejection (3). Again at Topeka on June 8 he said:"You will get a full opportunity of recording your vote by the convention submitting the constitution to a vote of the whole people. I say they will; but I go a step further. If I have not the power to bring it about, if the convention will not do it, I will join you in lawful opposition to their proceedings"(4). Stanton also said:"I do not doubt that the convention will in some form, provide for submitting the great distracting question regarding their social institution, which has so long agitated the people of Kansas, to a fair vote of the actual bona fide residents of the Territory with every possible security against fraud

(1). Douglas, Constitutional and Party Questions, 111.

(2). Cong. Globe,1 session, 35 Cong., 54.

(3). Robinson, 351.

(4). Cong. Globe, 1 session, 35 Cong., 1335.

and violence" (1). It will be observed that some of these statements may be construed as promises to submit the whole constitution; others as promises to submit only the slavery clause to a fair vote.

As soon as the inaugural of Walker became public, feeling ran high in many parts of the South. Various newspapers attacked him (2), the Democratic State Convention of Georgia denounced the inaugural address and requested his removal, while the same body in his own state of Mississippi accused him of treating the South unjustly and meddling with the high public duty entrusted to the convention (3). But galling as this criticism must have been to Walker, the pressure from the opposite side was even stronger. We have seen why the free-State people would take no part in the election of delegates. It is true that late in April a number of anti-slavery leaders in Lawrence had offered to participate if the registry could be corrected and completed, and the ballot-box protected from violence and fraud, but Stanton had not the power under the Convention Act to comply with these conditions and he frankly admitted it (4). Now as the election drew near the attitude of the Republicans became very threatening. On June 9 the Topeka Legislature met, doubtless as much for overawing Walker as for any other purpose, for no quorum appeared. That fact, however, was carefully concealed from him (5), so he seems to have received full benefit of the intended in-

(1). Cong. Globe, 1 session, 35 Cong., App., 279.

(2). Rhodes, II, 275.

(3). Nicolay and Hay, II, 101.

(4). Colfax in H. of R., Cong. Globe, 1 Sess., 35 Cong., 1218, 1219.

(5). Spring, 214.

pression, for he aftrewards wrote that but for the position assumed in his inaugural address and emphatically repeated at Topeka, "the Territory would have been involved immediately in a general and sanguinary civil war" (1). On June 28 he sent a letter to Buchanan defending his course and asking the support of the Administration; and in his answer on July 12 the chief executive affirmed that "on the question of submitting the constitution to the bona fide resident settlers of Kansas he was willing to stand or fall" (2). Other statements of a similar tenor might be quoted as showing the settledpolicy of the Administration in favor of submission to the people.

But as if that were insufficient, the Democratic party, embracing the pro-slavery element, at its county convention for Douglas county, passed a resolution to support no man as a delegate who would not promise to use every honorable means to submit the work of the convention to every actual citizen of Kansas. This resolution was heartily endorsed by Calhoun and the other seven Democratic candidates from Douglas county in a public statement two days before the election (3). According to the testimony of Walker, "but for these assurances it was universally conceded that they had no chance whatever of being elected" (4). That clearly indicates the dependence placed by the anti-slavery citizens in the promises of the par-

(1). Cong. Globe,1 session, 35 Cong., 1090.

(2). Nicolay and Hay, II, 101, 102.

(3). Cox in H. of R., Cong. Globe,1 Sess., 35 Cong., 54.

(4). Baker, Works of Seward, IV, 51.

ty in power. It may be well just here to observe how far the Democrats followed out this principle. At their Territorial Convention held in Lecompton early in July (1), a pro-slavery delegate offered a resolution, instructing the nominee of the party for Congress "to support their adoption of the State constitution, which might be framed by the constitutional convention which should assemble in September next, whether the same had been submitted for ratification by vote of the people or not". This proposal was laid on the table by a vote of 42 to 1 (2). Again, as late as September, 1857, Ransom, the Democratic candidate for Congress, canvassed every part of Kansas in favor of submitting the constitution to the people, declaring that the Democratic party were in favor of such a submission (3). All this simply makes it plain beyond a doubt that if politics and honor are only distant relatives, the people of Kansas were entitled to ratify their state constitution by a direct vote.

The election itself of June 15, 1857 passed off quietly. The Missourians sensibly enough did not interfere (4); they were not needed. Only 2200 votes were polled, showing that the free-State men, barring fraud, could have controlled the election had they chosen (5). The result was, of course, entirely agreeable to the slavery interests.

(1). Spring, 215.

(2). Chandler in Senate, Cong. Globe, 1 Sess., 35 Cong., 1090.

(3). Douglas in Senate, Ibid, 17.

(4). Clark in H. of R., Ibid, 1304.

(5). Wilder, 128.

C H A P T E R III.

The Session of the Convention.

An event of consi erable importarce wasthe approaching election of a Territorial Legislature in the fall of 1857. Walker's repeated promises of fair play (1) and the importunities of Senator Wilson (2) finally persuaded the free-State people to participate in it. Money was collected in the East to organize the party and conduct the campaign (3). When the election occurred on October 5, Parrott, the Republican candidate for Congress, was elected by a heavy majority (4). Enormous frauds were attempted by the pro-slavery party (5); McGee county which had given 14 votes in June now furnished 1266; and the hamlet of Oxford, containing only six houses, came forward with 1628. These returns, which would have made the Legislature pro-slavery, were thrown out by Walker (6), thus leaving to the Republicans 9 of 13 councilmen and 24 of 39 representatives (7).

We must return to the constitutional convention. Covernor

(1). Spring, 216.

(2). Wilson, Slave Power, II, 537.

(3). Ibid, 539-40.

(4). Nicolay and Hay, II, 104.

(5). Spring, 218.

(6). Wilder, 151.

(7). Spring, 220.

Walker, writing to Cass, Secretary of State, in July, 1857, prophesied as follows: "After much conferenc with a majority of the delegates" his opinion was that their course would be " to adopt a State constitution very similar to tha' of some of the southern States, securing the right to the slaves now in the Territory, numbering probably from two to three hundred, but prohibiting the introduction of any more slaves; excluding all free negroes, enforcing by most stringent provisions the execution of the fugitive slave law. Such a constitution, if submitted to a vote of the whole people, would in my opinion be adopted by a very considerable majority"(1).
The convention had assembled at Lecompton on September 7 (2) in pursuance of the Convention Act (3). Forty-four of the sixty delegates were present (2). John Calhoun, surveyor general of the Territory, was chosen president, together with the usual staff of subordinate officers including a chaplain. Many considered the addition of this official foolish, but the greater number thought it"would have a good effect on the country". The individual who was understood to have perpetrated the Oxford frauds was subsequently chosen clerk of the convention by acclamation on the suggestion that his services in Johnson county entitled him to that position (4). After commit-

1). Cong. Globe,1 session, 35 Cong., 772.

(2). Spring, 221.

(3). Cong. Globe, 1 session, 35 Cong., App., 4.

(4). Douglas in Senate, Cong. Globe, 1 Sess., 35 Cong., 142.

tees had been appointed and the various parts of the proposed constitution referred to them , an adjournment was declared (1). Beyond a doubt the object of this was to await the result of the impending election.

After that but one source of hope was left to the partisans of slavery, viz., the constitutional convention. The Legislature had passed from their hands, and so hopeless a minority as they constituted could not expect to regain it. When the convention reassembled at Lecompton on October 19 (2), it represented the final opportunity of slavery in Kansas. This fact was understood no less by the anti-slavery party than by the convention itself. That portion of the free-State party which had voted in the election was willing that the convention should meet and adopt a constitution which they might vote down if they chose; if no such opportunity were offered, the Legislature would provide one since it would have the power and disposition to do so (3). A faction headed by Lane wanted to make war on the convention and prevent the formation of a constitution (3). Lane's plans were carefully worked up in secret but they became known in Lawrence on October 17 and through the efforts of Dr. C. W. Brown, editor of the Herald of Freedom, and a large number of the influential and conservative free-State citizens of Lawrerce the peril was averted (4). Clearly the effect of

(1). Douglas, Constitutional and Party Questions, 114.

(2). Spring, 221.

(3). Robinson, 369.

(4). Ibid, 370.

an attack upon the convention would have been to bring the anti-slavery people into very great disrepute and lose them friends that they would shortly need. Such a course would have accomplished little for the sittings of the convention were protected by United States troops (1). The conclusion of the matter must therefore be regarded as highly fortunate for Free-Soil interests in Kansas.

When the convention reassembled at Lecompton on October 19, the town was, nevertheless, crowded with free-State men (2) and it seems likely that but for the presence of the regulars the Lecompton constitution would never have been formed. For three days no quorum appeared (1) and only forty-three of the sixty delegates participated in the work at any time. Even out of that number it often happened that scarcely more than thirty were present (3) and some sessions at which the most important matters were decided were held without a quorum (4). Twenty-eight votes decided the question of slavery and the proposal to submit to a popular vote was carried by a majority of two (5). The journal of proceedings for the last few days is missing and it does not mention at all many sections of the completed constitution, among them the submission clause (5). This matter of submission appears to stand alone so far as exciting strife in the convention was concerned. Judge Elmore and a few o-

(1). Rhodes, II, 278.
(2). Spring, 221.
(3). Von Holst, VI, 87.
(4). Washburn in H. of R., Cong. Globe, 1 Sess.,35 Cong., 1348.
(5). Nicolay and Hay, II, 108.

thers advocated complete submission, let the result be what it might (1); a strong faction opposed every sort of submission, saying that the entire constitution would be rejected and that the unfairness of the proposed submission was a "dodge" and a swindle (2). The compromise, however, was adopted after an angry and excited debate by a majority of two as we have seen. On the last night of its session the convention also amended the schedule by striking out the word "citizen" and inserting the word " inhabitant" in the clause defining who should be entitled to vote at the submission (3). Whether or not this change was made for the benefit of Missourians we can only conjecture. Forty-three delegates signed the constitution according to Buchanan (4); Wilder gives the number as forty-five (5). The final adjournment occurred November 7, 1857 (4).

A rather interesting point is raised by one authority in connection with the convention (6). It is asserted that Calhoun, the president of the convention, went to Walker and urged him to support the program of the convention with regard to submission. The policy of the Administration, he said, had changed and should Walker join heartily in the effort to make Kansas a slave state, he would have a prospect for the Presidency but Walker angrily ~~refused~~

(1). Spring, 222.

(2), Ibid, 224.

(3). Goodwin in H. of R., Cong Globe,1 Sess., 35 Cong., 846.

(4). Annual Message, Dec., 1857,

(5). Wilder, 147.

(6). Nicolay and Hay, II, 109-113.

refused his offer. It also appears that Secretaries Thompson and Cobb of the Cabinet sent an agent to the convention who insinuated that those two Cabinet members while favoring submission would not oppose the admission of Kansas under a pro-slavery constitution sent directly to Congress. The hint proved sufficient and a compromise was reached which was virtually a victory for the enemies of submission. Although Buchanan subsequently repudiated his unconditional promises of submission made the summer before, we may assume that he knew nothing of this Cabinet intrigue or of Calhoun's move toward Walker, for when Walker consulted with the President in Washington in the latter part of November, the President distinctly and emphatically assured him that "he had not authorized anybody to say that he had approved of the Lecompton program". This shows that a cabal was early formed in the Cabinet to secure Kansas to the South and that later on Buchanan acceded to its plan.

The Lecompton constitution (1) was in most respects not an extraordinary document; in a few it was. Upon those few sections the subsequent debate in Congress turned. Later on some of them will be discussed in detail but at this point they will merely be mentioned.

The preamble claims the right of admission by virtue of the Louisiana Treaty and the Kansas-Nebraska Act. The convention evidently regarded them as enabling acts passed by Congress.

In apportioning the senators and representatives of the State Legislature among the counties unfairness is undeniable. Not only was the Oxford fraud of October 5, 1857 accepted in the basis of ap-

(1). Wilder, 134-48.

portionment(1), but other inequalities are obvious. The mere fact that the counties on the Missouri border were given a large preponderance of representation (2) does not necessarily indicate injustice. Those counties would naturally be expected to have the major part of the population, but even among them partiality is evident. The apportionment cannot be justified by either the registration in the spring of 1857 or the results of the June or October elections. The only logical conclusion is that the convention suited itself in the distribution of seats and since that body was so strongly pro-slavery we may suppose that all possible safeguards were employed to ensure the defeat of the Republican forces at the election of the Legislature.

Artivle VII was entitled Slavery. It stated that "the right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same and as inviolable as the right of the owner of any property whatever. The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners previous to their emancipation a full equivalent in money for the slaves so emancipated". In the Bill of Rights it was declared that free negroes should not be permitted to live in the state under any circumstances. On December 21 an election was to be held. The officers in charge were all to be appointed by John Calhoun. Two ballots should be furnished, one

(1). Douglas in Senate, Cong. Globe, 1 session, 35 Cong., 141.

(2). Stanton, Jan. 29, 1858, Ibid, 597.

endorsed "Constitution with Slavery", the other "Constitution wit no Slavery". If more of the latter kind happened to be cast, then "the article providing for Slavery shall be stricken from this Constitution, and Slavery shall no longer exist in the State of Kansas, except that the right of property in slaves now in this Territory shall in no manner be interfered with". This proposition was regarded by the Republicans as no submission at all (1), for it seemed to them that in either case slavery was perpetually established in Kansas. From one point of view the "Constitution with Slavery" was preferable to the "Constitution with no Slavery" because the former carried with it limited emancipation possibilities while the latter did not. Any person offering to vote at this election must take an oath to support the constitution (Lecompton). This was entirely unreasonable as was afterwards shown in Congress, for it was uncertain what its final form would be; consequently a man to vote must swear to support he know not what.

Immediately after this election the constitution was to be sent to Congress by the president of the convention or in case of his failure by the president pro tem. As soon as Congress approved the Constitution the president of the convention was directed to issue a proclamation summoning a Legislature within thirty-one days. In case of his removal, absence or disability his duties devolved upon the president pro tem. But without waiting for Congressional action the schedule of the constitution fixed January 4, 1858 as the date for the election of state officers.

(1). Spring, 223.

As if willfully to deprive the anti-slavery party of the fruits of the victory gained at the October election, it was provided that all officers, civil and military, holding their offices under authority of the Territory of Kansas, should continue to hold and exercise their respective offices until they should be superseded by the authority of the state. "All laws now in force in the Trritory of Kansas, which are not repugnant to this constitution, shall continue and be of force until altered, amended, or repealed, by a Legislature assembled under the provisions of this constitution". The convention had no right to insert such clauses in the constitution. Therefor the Legislature of the Territory was not bound to obey those clauses. Neither the people of a territory nor any authoritative expression of their will can affect the powers of a territorial government, which is the creation of the higher authority of Congress. Until the constitution framed by a territory is accepted by Congress it can have no binding force and the authority of the territorial government must be fully recognized (1).

With regard to amendment, the Legislature, after 1864, whenever it should think amendment necessary, should permit the electors at the first general election to vote on the question of calling a convention, provided two-thirds of the members of each house were willing. If a majority of the electors favored a convention, the Legislature at its next regular session should call one; but no alteration could be made to affect the rights of property in the ownership of slaves.

An ordinance which accompanied the constitution affirmed the

(1). U.S. Supreme Court Reports, 5 Howard 343.

right of the state to tax all United States lands within her limits. The state, however, would relinquish this privilege if Congress would accede to certain demands for lands. Some of those demands were not unusual but two were exorbitant. One was that each alternate section of land then owned or thereafter acquired by the United States within twelve miles on each side of a railroad leading southerly through the state from a point on the northern boundary and one leading westwardly through the state from a point on the Missouri River Should be granted to the state for the purpose of aiding in the construction of those railroads; the other was that four sections in each township should be given to the state for the support of common schools.

C H A P T E R IV.

The Submission of the Constitution.

The free-State people had been comparatively quiet during most of the session of the convention, but they were expecting to defeat the constitution at the polls if it did not satisfy them. Now when they became familiar with the product of the convention's labors and the method and extent of the proposed submission, their wrath blazed out and mass-meetings were held in variuos places at which the convention was bitterly denounced (1). Threats of setting the Topeka government in operation were freely made and on November 28 a majority of the members of the Legislature elected in October asked Acting Governor Stanton to call an extra session of the Legislature and pledged themselves not to engage in general legislation (2). Walker had left the Territory on November 16 on a month's leave of absence, which had been cordially granted by the President in his letter of October 22 (3). Stanton acceded to the request of these gentlemen and called an extra session to meet December 7 (2). On December 2 a very large free-State convention was held at Lawrence with Governor Robinson presiding. The uncompromising attitude of the anti-slavery party was evident from the language of the resolutions adopted, which declared that they would never under any circumstances "permit the Lecompton constitution, so framed and not

(1). Spring, 225.

(2). Wilder, 152.

(3). Nicolay and Hay, II, 112.

submitted, to be the organic law of the State of Kansas, but do pledge our lives, our fortunes, and our sacred honor in ceaseless hostility to the same" (1). The elections both of December 21 on the constitution and of January 4 for state officers were repudiated as unworthy of notice (2).

On the same day advance copies of the President's annual message were transmitted by Cass to Stanton (3). This document took a position favorable to the Lecompton constitution and on December 8 Cass wrote to Stanton requesting him to conform to the views of the President (3). The following day Stanton wrote to Cass justifying his action as follows: "The important step of calling the Legislature together was taken after I had become satisfied that the election ordered by the convention on the 21st instant could not be conducted without collision and bloodshed" (4). But the Administration had already decided upon Stanton's fate. On December 11 Cass wrote to J. W. Denver that he had been appointed in Stanton's place (3) and Walker, deserted by the Administration, could do nothing but resign. The charge against Stanton was that he had "thrown a new element of discord among the excited people of Kansas" (3) by convening a special session before the regular time.

The new Legislature met on December 7. Lecompton was again full of free-State people from all parts of the Territory. So great a jubilee was held that no quorum assembled until after the

(1). Spring, 226.

(2). Wilder, 153.

(3). Nicolay and Hay, II, 116.

(4). Buchanan's Administration on the Eve of the Rebellion, 39.

merry-making was over and the crowd had dispersed (1). Stanton's message asked for the submission of the whole constitution to a vote. It is a fair and able statement of the laws and the elections relating to the Lecompton constitution (2). On December 17 an act was passed submitting it again to the people on January 4 (3) but to the ballots already authorized a third was added indorsed "Against the constitution formed at Lecompton" (1). Two days later Stanton issued a proclamation appointing commissioners for the election to be held on January 4 (4).

The result of the submission election held on December 21, as announced by Calhoun, was for the "Constitution with Slavery", 6226; "Constitution with no Slavery", 569 (4). These returns were known by any one at all familiar with the Territory to be notoriously fraudulent. Vague and extravagant statements were made, one member of Congress declaring that not more than 2000 legal votes were polled (5). Probably the fairest estimate is that of the Commissioners appointed by the Legislature to investigate the matter. They reported the number of illegal votes as follows: at Kickapoo, 700; at Delaware City, 145; at Oxford, 1200; at Shawnee, 675; total, 2720(4), leaving a majority still of almost 3000 votes for the "Constitution with Slavery", even if it be conceded that every fraudulent vote was cast on that side. C. W. Babcock, President of the Coun-

(1). Spring, 227.

(2). Wilder, 153.

(3). Ibid, 154.

(4). Ibid, 155.

(5). Bennett in H. of R., Cong. Globe, 1 Sess., 35 Cong., App., 241.

cil, and G. W. Deitzler, Speaker of the House, were invited by Calhoun to be present at the opening of the returns on January 13 and they reported 6143 votes for the "Constitution with Slavery", 569 for the "Constitution with no Slavery". 3000 was given as the number of fraudulent votes (1). This however left the "Constitution with Slavery" a clear majority of 2500.

Some anti-Lecompton congressmen argued that the election of December 21 was absolutely without force on the ground that "fraud vitiates everything". That position can hardly be maintained, for certainly some frauds are perpetrated in every Presidential election but the whole election is not therefore void. Toombs was right when he said that a legal election is not void until it is shown that enough illegal votes were cast to have reversed the result (2). The choice of officers for the election, which has already been described, was also a subject of complaint and properly so. For the control of the election as provided by the constitution was just as much a part of the plot to force upon the people something they detested as was the method and extent of submission. Senator Stuart of Michigan said, "Every other State formed from a Territory, whose history I have been able to examine, has provided that the president of the convention should issue his proclamation to the sheriffs or other proper officers of the Territory to hold an election on a certain day, the people at that election voting upon the constitution (3).

(1). Wilder, 156.

(2). Senate, Cong. Globe, 1 session, 35 Cong., Appendix, 127.

(3). Senate, Cong. Globe, 1 Sess., 35 Cong., 161.

Meanwhile the pro-slavery party had held a convention at Lecompton on December 9 and placed in nomination a ticket for the state offices to be filled on January 4. Resolutions were adopted declaring it to be the duty of every true Democrat to support the Lecompton constitution, affirming the fullest confidence in the administration of Buchanan, and terming all who opposed them "enemies to the Union" (1). Two weeks later a Democratic convention met at Leavenworth (2) to protest against admission under the Lecompton constitution, the Topeka constitution, or any other instrument which had not been submitted to a free vote of the people and to justify the course of Walker and Stanton.

As we have seen, the Republican convention at Lawrence on December 2 decided not to participate in either of the elections authorized by the Lecompton constitution. But sentiment seemed to be uncertain. Many thought the policy of abstention from the polls had been pursued long enough and another convention assembled at Lawrence on December 23 and 24 to reconsider the question of voting for state officers on January 4 (2). Some feared that participation in the affair would be taken as a ratification of the constitution; others preferred a refractory and lawless course to peace order. In fact the alliance of these two elements proved too strong for Robinson, Smith and Ewing who led those who did believe in taking part, for the opposition succeeded in getting their friends recognized as delegates from different parts of the Territory not

(1). Wilder, 154.

(2). Ibid, 157.

fully represented (1). The method of voting by districts contributed to the same result, but the conservatism felt so strongly that they would not accept the decision. A mass-meeting was immediately held by the minority in the basement of the Herald of Freedom office and a ticket was nominated, entirely composed, however, of men opposed to the Lecompton constitution (2).

On December 23 Cass wrote to Denver that "every person entitled to vote on the constitution ought to have free access to the polls and be free from all restraints whatever. The Territorial Legislature was doubtless convened on the 7th instant. Should it authorize an election by the people for any purposes, this election should be held without any interruption, no less than those authorized by the convention" (3). Three days later Denver issued a proclamation saying it was "the anxious desire of the President that the approaching elections should be fairly held" (3). United States troops were distributed over the Territory to "preserve order and ensure to every one entitled a fair opportunity of voting" (4). So the election of January 4, 1858 was fully recognized by the Administration as legal.

On the appointed day the vote on the constitution and for state officers was taken. The result was conclusive as to the popularity of the Lecompton constitution, for 10226 votes registered against

(1). Robinson, 375.

(2). Wilder, 157.

(3). English in H. of R., Cong. Globe, 1 Sess.; 35 Cong.,1015.

(4). Wilder, 158.

it, 138 for it with slavery, and 23 for it without slavery (1). These scattering few must not be accepted, however, as indicative of the support which that document still commanded, since its friends concertedly abstained from voting on it again after December 21 (2); nor on the other hand should all of the 10226 votes be regarded as bona fide. Charges and counter cgarges were made. Why, it was asked, were 3000 more ballots cast against the constitution than the Republicans could poll for state officers? The answer was that a large division of the free-State party, as we have seen, did not wish to acknowledge the constitution in any way, yet to participate in the election of officers provided for by it was what they felt to be the equivalent of an acknowledgment. Our best criterion of the amount of fraud actually committed must again be the report of the committee directed by the Legislature to examine the returns. On February 12 it reported as follows the number of illegal votes cast "at the election on January 4 for officers under the Lecompton constitution": at Kickapoo, 600; Delaware City, 5; Delaware Agency, 336; Oxford, 696; Shawnee, 821; total, 2458 (3). Of the returns from Delaware Agency the committee said they "were honestly made out by the officers of the election, and subsequently 336 names were forged upon them; and that John Calhoun was particeps criminis after the fact". It can scarcely be supposed that all the fraudulent votes were cast for officers and none against the constitution;

(1). Wilder, 160.

(2). Von Holst, VI, 187.

(3). Wilder, 162.

but granting that all the illegal votes were against the constitution, it is nevertheless plain that a heavy majority of the people of Kansas opposed it.

The vote for state officers was remarkably close. The entire free-State ticket was elected by majorities ranging from 300 to 700. Individuals received from 6400 to 7300 votes. Babcock and Deitzler reported the fraudulent votes on this ticket at Oxford, Shawnee, Kickapoo and other places as amounting to 3000 (1). That number is amply sufficient to change the result of the election, but if the counties in which the worst irregularities occurred had been thrown out, the result would only have been to increase the Republican majority. In the State Legislature the free-State party elected 29 Representatives and 13 Senators; the pro-slavery party, 15 Representatives and 6 Senators (1). These returns were buried in an candle-box under a wood-pile in Lecompton in order to keep them out of the hands of the investigating committee, but Samuel Walker, sheriff of Douglas County, was informed of their whereabouts and dug them up(2).

Denver now wrote a long letter to the President in which he summed up the condition of affairs in the Territory as he then understood them, and urged Buchanan not to present the Lecompton constitution to Congress at all but to ask Congress to pass an enabling act to let the people of the Territory hold a convention and adopt a constitution, thus wiping out the result of all previous attempts

(1). Wilder, 156.

(2). Spring, 229-30.

in that direction (1). Judge Elmore went to Washington and presented this letter to the President. Mr. Buchanan said he was very strongly impressed with it and was very sorry he had not had the information earlier, because he had prepared his message in relation to the Lecompton constitution and shown it to several senators so that it could not be withdrawn (1). This reply and the letter of December 23 to Denver show how slowly and even reluctantly Buchanan shifted his position on the Lecompton question. On January 20, 1858 the free-State officers elected under the Lecompton constitution memorialized Congress to defeat that instrument and not to admit Kansas under it (2), and on the following day the Territorial Legislature passed an act for the election of delegates to a new constitutional convention in March (3). It was evident that popular sovereignty was about to overthrow the Lecompton proposition. It had one hope left and that was Congress.

(1). Robinson, 425.

(2). Wilder, 160.

(3). Ibid, 161.

C H A P T E R V.

Congressional Action on the Lecompton Constitution.

Three days before the opening of the session in December 1857, Douglas arrived in Washington and had a consultation with the President. He advised Buchanan not to have anything to do with the Lecompton constitution but the latter insisted that he must recommend it in his annual message, upon which Douglas threatened to denounce it as soon as it was read (1). The interview broke up in a personal quarrel. On December 7 Congress assembled with the Democrats commanding a clear majority in both houses. Orr of South Carolina was elected Speaker of the House by 128 votes against 84 for Crow, a Republican from Pennsylvania (2).

On the next day the President's annual message (3) was received and read in both houses. It contained a brief account of the Lecompton affair to date, but passed briefly over the various questionable circumstances which we have noticed in connection with the election of the convention with the remark that "in some districts delegates may be elected by small majorities, whilst in others those of different sentiments may receive majorities sufficiently great not only to overcome the votes given for the former, but to leave a large majority of the whole people in direct opposition to a major-

(1). Nicolay and Hay, II, 120.

(2). Cong. Globe, 1 session, 35 Cong., 2.

(3). Ibid, Appendix, 4-5.

ity of the delegates". While the President admitted that the submission of the whole constitution was "founded on correct principles", that he had expressed himself to that effect in Walker's instructions "in general and unqualified terms", and said he hoped complete submission would be the universal practice in the future, nevertheless he maintained that the strict letter of the Kansas-Nebraska Act demanded the submission of no part except that relating to slavery. He insisted that the question of slavery could "never be more clearly and distinctly presented" to the people of Kansas than it would be at the election of December 21. The reservation of the rights in slaves already in the Territory was justified and the importance of the form of the constitution which Kansas should establish was minimized in comparison with the subsidence of excitement which would occur "when she was once admitted into the Union". Although Congress was not advised to take any action, the Lecompton constitution was spoken of favorably in every way, indeed, to such an extent that it was rightly considered a prospective Administration measure.

True to his promise Douglas immediately arose and said that while he had listened to the message with great pleasure and cordially concurred in most of the views expressed, he "totally dissented from that portion which might fairly be construed as approving of the proceedings of the Lecompton convention" (1). After declaring his intention to give his reasons at an early opportunity he took his seat. Stuart, a Democrat from Michigan, followed him with the opinion that the formation and adoption of the Lecompton constitution had been

(1). Senate, Dec. 8, 1857.

in violation of the principles of the Kansas-Nebraska Act since the people of Kansas had not been left free to "form and regulate their domestic institutions" as they saw fit. Jefferson Davis and Bigler of Pennsylvania spoke on the opposite side. Davis designated it "a denial of sovereignty to the people to say that they have not the power to elect their delegates and invest them with authority to form an instrument that shall be binding". These brief remarks together with those that followed fail to give an idea of the arguments which both sides were to employ but they make it clear that an event of stupendous significance had grown out of the work of the "Rump" convention at Lecompton; it was the dissolution, the division of the Democratic party.

That party in the years following the decline of the Whig organization had truly called itself the only great national party. Dangerous enough was its decadence after the passage of the Kansas-Nebraska Act but it was still a strong minority in the North. This minority alone held the Union together, for without it the South would be steadily outvoted in Congress, a Republican president would be elected, and only war could offer a settlement. Douglas, it is probable, aspired to the presidency. Therefore he must not go out of politics but must retain his seat in the Senate and establish even more securely his position at the head of the party. But he could not fail to appreciate the temper of his own state on the Lecompton question. Already his colleague Trumbull was a Republican. And so it came to pass that Stephen A. Douglas, the leader of the national Democratic party, deserted the Democratic Administration, broke with the solid Democratic South on the vital

issue, and carried with him a large part of that indispensable Northern Democratic minority. True it is that many of the bolters slunk back into the Democratic camp before the close of this session, but they must ever after have been regarded by the South very much as the British regarded Benedict Arnold; the adherent who cannot be counted upon in a crisis is almost worthless. The last Democratic president had been elected and the last national Democratic convention had been held. Herein we conceive lies the chief importance of the Lecompton constitution: it assured the crisis and rendered impossible its delay.

The next day Douglas in an extended speech attacked the Lecompton constitution completing and defining the schism in the party (1). He first stated his satisfaction that the message did not recommend favorable action by Congress but merely signified willingness to sign a bill for admission under the Lecompton constitution. The President, he said, had committed a "fundamental error" in supposing that the principles of the Kansas-Nebraska Act demanded the submission of nothing but the slavery question. This blunder he attempted to account for by the fact that when the Kansas-Nebraska Act was passed Buchanan was absent from the country as Minister to England. His second argument was upon the legality of the Lecompton convention. He maintained that no enabling act had been passed by Congress giving the people of Kansas the right to form a state constitution and ask admission, that therefore the Legislature could not legally call a convention to frame a constitution which had any right to

(1). Senate, December 9, 1857.

demand acceptance by Congress, although the people could at any time peaceably assemble to petition for any purpose. And so Douglas went on, basing his action on just these two arguments, complaining at length of the hardship of denying the people of Kansas the right to vote on their banking system, the location of their railroads and various other things, yet never saying a word relating to the fairness or unfairness with which that provision for slavery was to be submitted, taking care not to give the impression that the slavery clause was more important than any one of the others. He seemed very much afraid that he would touch something to lay him open to the charge of anti-slavery sentiments. Other objections later urged with considerable vehemence were the unrepresentative character of the convention, the pledges of submission which had been given, the provision for amendment of the constitution, the provision regarding free negroes, the method of making the returns of the submission election, the land grants demanded by the ordinance accompanying the constitution, and the inexpediency of admission.

The friends of admission also expatiated upon the expediency of admission and contended that the Lecompton constitution must be received because its formation had in every way been legal. It was held that the Kansas-Nebraska Bill was an enabling act and that it was incumbent upon Congress to accept the constitution formed under its authority. Subsequent to January 4 the anti-Lecompton party employed most frequently the argument of popular disapproval, while the Lecomptonites claimed that the vote for state officers on both sides was an indorsement of the instrument by over 12000 votes.

The frauds and violence which had characterized the past his-

tory of Kansas were scored without mercy by the Republicans, and the free-State settlers of Kansas were stigmatized by the South as "hired mercenaries" sent out by the Emigrant Aid Company to sow dissension and stir up strife. One cannot go far in a perusal of the nine hundred pages of the Congressional Globe which are filled with the debates on the Lecompton constitution without getting a good idea of the whole discussion. Not only was there any amount of quibbling but there were frequent misstatements, some of which conscience compels us to denominate lies. Senators contirually misquoted laws and misquoted one another. To mention names would be needless and malevolent. Douglas was especially unfortunate in "having his position mistaken". Bitter recriminations were indulged in. Over and over southern men charged that the slavery clause was the real cause of the northern opposition. This was, we believe, pretty generally a fact, yet it might have been inquired with equal pertinency whether the slavery clause was not the real cause of the South's clamor for admission. Republicans, digressing from the main question, attacked the institution of slavery where it had existed for a century with all the fury of Abolitionists. Disunion sentiments were freely voiced by southern congressmen and almost immediately after Douglas' speech newspapers both southern and Republican began to speak of the jeopardy in which the Union was being placed (1). The cry of secession so often heretofore raised for the sake of intimidation had always been disregarded, but the fact that the danger was perceived and commented upon by such papers as

(1). Von Holst, VI, 177.

the New York Tribune (1) and by so conservative a man as Douglas (2) establishes its reality.

As early as December 16 the effort of the opposition began to be directed to an investigation of the facts connected with the formation of the Lecompton constitution. On that day a resolution was adopted by the Senate requesting the President to communicate to it all correspondence between the Executive Department and the governor together with such orders and instructions as had been issued to the governor in relation to the affairs of Kansas (3). Two days afterward another resolution of similar character presented by Trumbull was passed (4). On the same day a third resolution introduced by Pugh of Ohio was also passed (4). It called upon the President for the returns of the election of October, 1856 on the question of calling a convention, the act calling the convention and providing for the election and apportionment of delegates, the census and registration of voters by counties and precincts as taken under that act, the apportionment of delegates made upon the returns of that census and registration, the returns by counties of the elections in June and October, 1857, the proclamation of the governor or acting governor upon the census, registration of voters and several elections above referred to, and the journal of the Lecompton convention. Later the elections of December 21 and January 4 were also urged as proper subjects of inquiry. These endeavors, however,

(1). Von Holst, VI, 178.

(2). Cong. Globe, 1 session, 35 Cong., 50.

(3). Ibid, 38.

(4). Ibid, 65.

were steadily resisted by the South. It was insisted that the only things into which Congress could inquire consistently with the doctrine of congressional non-interventionwere the desire of the people of Kansas to become a state, the sufficiency of the population, and the republican form of the constitution framed. But the Constitution, which is higher than the legislative principle of non-intervention or any other legislative principle, does not say that Congress "must" admit new states if these conditions are fulfilled, it says that these conditions must be fulfilled, and that Congress "may" admit new states. Discretionary power is therefore vested in Congress. But it must be competent for Congress to inquire into everything which will assist it to exercise its discretionary power wisely. Our conclusion is that these resolutions were eminently wise and proper.

Buchanan's position has been noted all along. All through the summer of 1857 he stood for unconditional submission. Evidences were seen of a cabal in his Cabinet working in opposition to his policy of fair dealing. Unfortunately Buchanan was not a man of very great independent force of character. Pressure from some source showed its effect in the annual message of December, 1857. Soon afterwards Walker and Stanton were removed, but the letter of Cass to Denver on December 26 shows reluctance at departing from the old path of rectitude. The threats of southern men and southern newspapers doubtless constituted the deciding force. The President was convinced that the end of the Democratic party meant the end of the Union. The position which all the southern Democrats would assume was certain. If the Administration left them so

would many of the northern Democrats. Buchanan's hope was to make the division within the party as small as possible by adding all the moral strength which the Administration had to the South. We believe that Buchanan acted contrary to his convictions of justice because his convictions of political expediency were the stronger. The ultimate triumph of the latter came in the early part of February, 1858.

On February 2 a special message on the Lecompton constitution was sent to Congress (1). It spoke at considerable length of the Topeka movement in terms of strong condemnation. Then taking up the Lecompton constitution it gave a resume' of the events attending its formation. Walker's inaugural address was quoted to sustain the legality of the convention; the Republicans were severely arraigned for not voting at the election of delegates; their reason, it was charged, was that "they had predetermined at all hazards to adhere to their revolutionary organization". When he instructed Walker in general terms in favor of submission, he had "had no object in view except the all absorbing question of slavery". He was "decidedly in favor of admission and thus terminating the Kansas question". The fears of some of the free-State party regarding the election of January 4 were verified, for he said, "A large majority of the persons who voted against the Lecompton constitution were, at the verysame time and place, recognizing its valid existence in the most solemn and authentic manner by voting under its provisions". A most rediculous statement of the case! It was simply a declara-

(1). Cong. Globe,1 session, 35 Cong., 533-35.

tion of want of confidence in Congress and the Administration, the expression of a fear that a Democratic majority would declare valid that of which we shall later see there was good reason for doubting the validity. If a majority of the people of Kansas desired to abolish domestic slavery, Buchanan maintained there was no other possible mode by which it could be effected so speedily as by prompt admission, since the majority had "at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government". Then came a protracted plea of expediency. The southern states would "keenly" feel the rejection of the constitution, dark and ominous clouds were hanging over the Union, etc. The whole matter was now before Congress.

Various bills were introduced to solve the question and referred to the Committee on Territories where they died. In December Banks offered an enabling act in the House (1) and Douglas presented one in the Senate (2). On January 4, 1858, Pugh of Ohio brought in a bill for the admission of Kansas under the Lecompton constitution with the ordinance struck out and two other conditions imposed (3). The seventh article entitled Slavery should be submitted to a direct vote of the qualified electors on April 7, 1858 when state officers, Legislature and congressmen should also be chosen. The returns of this election were to be made to the governor of the Territory and it was to be conducted in obedience to laws in force

(1). Cong. Globe, 1 session, 35 Cong., 84.

(2). Ibid, 65.

(3). Ibid, 175.

on November 7, 1857. In the second place the constitution should not be so construed as to limit the right of the people through their Legislature at any time to call a convention for the purpose of altering, amending, or abolishing their form of government subject only to the Constitution of the United States. The objections to admission which these conditions were intended to meet are plain.

In the House the special message of February 2 was referred to a select committee of fifteen which was instructed to "inquire into all the facts connected with the formation of said constitution and the laws under which the same was originated, and into all such facts and proceedings as have transpired since the formation of said constitution, having relation to the question of the propriety of admission of said Territory into the Union under said constitution, and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas" (1). It was well known that a majority of the Committee on Teritories was strongly in favor of admission (2) and therefore likely to be opposed to investigation. And yet in contravention of parliamentary law the Speaker appointed a committee, a majority of which was opposed to the object of the resolution which raised it (2). As a result nothing was done. Considerable time was spent in deciding to raise the committee and in quarrelling about its report. The House spent the whole night of February 5 in voting down incessant motions to adjourn and to excuse

(1). Cong. Globe.1 session, 35 Cong., App., 252.

(2). Cong. Globe,1 session, 35 Cong., 822.

from voting and did not adjourn until 6:25 A. M. on the following morning. A call of the House was ordered to secure a quorum. Keitt of South Carolina and Grow of Pennsylvania had a violent personal encounter followed by the usual "personal explanation".

In the Senate a majority of the Committee on Territories, to which the message of February 2 had been referred, reported on February 18 Senate Bill No. 161 for the admission of Kansas (1). At the same time Douglas and Collamer presented minority reports which also were printed. Day after day the debate went on with the greatest intensity. Its importance was not lost upon the South. Slavery was already one state in a minority and Kansas was needed to regain the equilibrium. Moreover if Kansas was lost Missouri would be thrown into the greatest danger with free territory on three sides of her. With anti-slavery sentiment so strong in the North defeat on this occasion might mean that no more slave states would ever be admitted. It may appear strange that in the face of the election of January 4 the South should still fight for the admission of a state which would be very likely to send such men as Lane and Robinson to the Senate. But it must be remembered that Calhoun had not issued any certificates of election and did not until the whole matter was settled so far as Congress was concerned (2). By the Lecompton Constitution he was given full control of the election returns, so in case of its acceptance by Congress he could have put a pro-slavery Legislature in power by a manipulation of returns. That would have insured the election of pro-slavery

(1). Cong. Globe, 1 session, 35 Cong., 755.

(2). Wilder, 185.

senators for the first term and the legislature might have been relied on to make further arrangments for perpetuating Mi. rule by fraud and violence.

On the evening of March 15 the pro-slavery majority in the Senate suddenly attempted to force the matter to a vote or demanded that the minority agree upon a day when the vote could be taken (1). The minority showed that inadequate time had been given for every one to speak and desired to adjourn in order to confer with its absent members as to when the vote could be taken. A call of the Senate was ordered and many of the men arrived in the early hours of the morning in a very bad temper. Toombs called upon the southern men to leave. Green of Missouri and Cameron of Pennsylavnia gave one another the lie and only the decision of the Vice-President prevented a personal encounter (2). At last an adjournment was obtained at six o'clock in the morning.

But the discussion was not confined to the halls of Congress. States in both sections were passing resolutions instructing their Senators and Representatives how to vote. In Concord the Democratic state committee of New Hampshire adopted resolutions based entirely on Douglas' views, and a resolution of the Democratic state committee of Indiana adopted by a vote of 378 to 115 declared that the people of every territory had the right to vote on the constitution drafted by a constitutional convention (3). From Ohio came the resolutions of the General Assembly passed on January 20 terming the

(1). See Cong. Globe, 1 session, 35 Cong.

(2). Rhodes, II, 298.

(3). Von Holst, VI, 191.

refusal of the Lecompton convention to submit the constitution to the people "unwise and unfortunate" and directing Ohio's Senators and Representatives to vote against admission (1). Similar directions came from Iowa complaining that "said constitution was not submitted to a fair and honest vote of the people" and requesting senators to resign if they could not support the resolutions (2). The Congressmen of Rhode Island (3) and Michigan (4) received the same instructions, those of the latter state being told to oppose admission under any constitution establishing slavery. New York (5) and later Massachusetts (6) and Wisconsin (7) also passed anti-Lecompton resolutions. The Illinois Democracy endorsed the action of Douglas but made no attack upon the Administration (8). The most radical action in the North was taken by Maine. The Legislature passed resolutions saying that the people of Kansas would be justified in resisting to the last extremity if a constitution were forced upon them and in that resistance " the people of Maine are ready to aid them, both by sympathy and action"(9). California (10) and

(1). Cong. Globe,1 session, 35 Cong.,428.

(2). Ibid, 566.

(3). Ibid, 607.

(4). Ibid, 735.

(5). Ibid, 1294.

(6). Ibid, 1597.

(7). Ibid, 1703.

(8). Ibid, 1869.

(9). Ibid, 1321.

(10). Ibid, 1576.

Tennesee (1) both instructed for acceptance of the Lecompton constitution. Alabama asked her governor if the Lecompton constitution was defeated to assemble the qualified electors to choose delegates to a state convention (2). The purpose of that convention was not stated but may be divined. The governor of Texas was authorized "to order an election for seven delegates to meet delegates appointed by the other southern states whenever the executives of a majority of the slave holding states shall express the opinion that such convention is necessary to preserve the equal rights of such states in the Union" (3).

On March 23 Crittenden of Kentucky offered a substitute for Senate Bill No. 161 and it was rejected by a vote of 34 to 24 (4). The first bill then passed the Senate by a vote of 33 to 25 (5). In its final form it provided for admission under the Lecompton constitution, stated the boundaries of the state and declared that nothing in the act should be construed as an assent by Congress to any of the propositions or claims contained in the ordinance accompanying the constitution or as an abridgment or infringment of the right of the people asserted in the constitution at all times to alter, reform or abolish their form of government in such manner as they might think proper (6). Cameron of Pennsylvania was paired with

(1). Cong. Globe,1 session, 35 Cong., 804.

(2). Ibid, 770.

(3). Miscellaneous Documents, 1 session, 35 Cong., III, No.95.

(4). Cong. Globe,1 session, 35 Cong., 1261.

(5). Ibid, 1264.

(6). Ibid, 1263.

Davis of Mississippi but every one of the other nineteen Republican members voted against the bill. They comprised seven states entire: viz., Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, and Wisconsin; the remaining five Republicans were Simmons of Rhode Island, Harlan of Iowa, Trumbull of Illinois, Chandler of Michigan and Wade of Ohio. Four Democrats went with them: viz., Douglas of Illinois, Stuart of Michigan, Pugh of Ohio and Broderick of California. Pugh, however, distinctly stated that his vote was cast against his will in obedience to the instructions of his state (1). Crittenden and Bell, Native Americans from the border states of Kentucky and Tennessee respectively, were the only southern men voting with the minority.

The House was one week in finishing the discussion. On April 1 the vote was taken. Giddings of Ohio moved to reject the bill but his motion was lost 95 to 137 (2). Montgomery, a Pennsylvania Democrat, then offered a substitute almost identical with that which Crittenden offered in the Senate (2). Quitman of Mississippi moved to substitute for Montgomery's substitute a bill very similar to Senate Bill No. 161 but it was voted down 72 to 160 (3). Montgomery's substitute was then adopted 120 to 112 (4). The 120 votes were given by the 92 Republicans, 6 Native Americans and 22 Democrats from the various northern states. Eight northern states

(1). Cong. Globe, 1 session, 35 Cong., 1264.

(2). Ibid, 1436.

(3). Ibid, 1437.

(4). Ibid, 1437-38.

went solid against Lecompton. All five of the Illinois Democrats bolted from the party ranks together with six of the eight Ohio Democrats. Four came from Pennsylvania, three from Indiana, two from New York, one from New Jersey and one from California. Three of the Native Americans were from Maryland, two from Kentucky and one (Gilmer) from North Carolina. Gilmer said that admission under the Lecompton constitution was the quickest possible way of making Kansas a free state (1). Therefore he supported the Crittenden-Montgomery substitute.

The Montgomery substitute (2) provided that Kansas should be admitted as soon as its inhabitants voted in favor of the constitution at an election in which the whole of it was submitted. But if the constitution at that election was rejected the people were "authorized and empowered to form for themselves a constitution and to that end might elect delegates to a convention". The governor and secretary of the Territory and the presiding officers of both branches of the Legislature were constituted a board of commissioners to have charge of these elections and the apportionment of delegates if it became necessary. In that case the new constitution when formed must be approved by a majority of the voters ata submission election. When the provisions of this act had been complied with, the President was by proclamation to announce the fact of Kansas' admission. A section was attached refusing the demands

(1). Cong. Globe, 1session, 35 Cong., App., 287.

(2). Cong. Globe, 1 session, 35 Cong., 1436.

contained in the ordinance of the Lecompton constitution but offering to the state two sections of land fromeach township, 72 sections for the support of a State University, 10 sections for the seat of government, 72 sections adjacent to salt springs and five per cent of the net proceeds of sales of public lands lying within the state on condition that the state should never tax the lands or property of the United States within its limits.

The Senate objected to the House amendment on the ground that it violated the principle of non-intervention by dictating a method for forming a constitution, so it was rejected by a vote of 32 to 23 (1). Pugh was the only man who turned over. The House by the same division as on April 1 adhered to its amendment (2). The Senate then asked for a conference. Green of Missouri, Hunter of Virginia and Seward of New York were appointed as the committee on the part of the Senate (3). The House agreed to the committee only by the casting vote of the Speaker (4). He appointed Stephens of Georgia, Howard of Michigan and English, one of the bolting Indiana Democrats (5).

(1). Cong. Globe,1 session, 35 Cong.. 1445.

(2). Ibid, 1545.

(3). Ibid, 1559.

(4). Ibid, 1590.

(5). Ibid, 1604.

C H A P T E R VI.

Objections to the Acceptance of the Lecompton Constitution.

It is our intention in this chapter to consider somewhat in detail the principal arguments urged against admission under the Lecompton constitution. The main argument used in favor of accepting it was that an enabling act had been passed, that the Lecompton convention was called by competent authority, that the constitution framed by that convention was the only legal expression of the will of the people of Kansas, and that it should therefore be received. The opposition contended that no enabling act had been passed and that it was not within the powers granted to the Territorial Legislature to call a constitutional convention.

First, was there an enabling act? Up to this time enabling acts had been passed for Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Texas, Wisconsin and Minnesota (1). All with the exception of the one for Texas, which was an exceptional case in every respect, contained an enacting clause as follows: "Be it enacted that the inhabitants of ---- be and they are hereby authorized to form for themselves a constitution and state government". No trace of such a clause is to be found in the Kansas-Nebraska Act which many maintained was an enabling act. In eight of the above states the qualifications of electors for choosing

(1). Jameson, Constitutional Convention, 180.

the constitutional convention and the time and place of the convention's meeting were prescribed. No such thing occurs in the Kansas-Nebraska Act nor does the word "convention" appear at all. It therefore does not seem to have been intended as an enabling act. Again, the extract from it which was held up as an enabling act read thus: "it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom; but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States"(1).To call a convention through the Territorial Legislature and to do it whenever they wished was simply an exercise of the prerogative "to form and regulate in their own way". Such was the reasoning of the friends of Lecompton. But the whole history of the question of slavery in the Territories is conclusive upon the point that the problem was not the method of forming institutions but simply the form of the institutions themselves. "In their own way" could not have been intended to contain any reference to the mode or time of regulating but only to the character of the institutions to be regulated. Guthrie in his work on the Fourteenth Amendment says very distinctly that in the interpretation of legislative provisions the intention must be taken into account. Hence there is strong reason to believe that the Kansas-Nebraska Act was not an enabling act since it was not intended as one. But there is yet weightier evidence to the same effect. So prominent a southern man as Robert Toombs admit-

(1). Davis in Senate, Cong. Globe,1 Sess., 35 Cong., 856.

ted in the Senate that it was not an enabling act (1) and a majority of that body held by clear implication concurred in his opinion, for in 1856 it had passed the Toombs Bill which was only an enabling act and intended as such (2). The only possible conclusion is that the Kansas-Nebraska Act was not an enabling act nor ever so considered until political purposes invited that point of view. Contention also was made that the Louisiana Treaty contained an enabling act (3), but the fact that special enabling acts had been passed for Louisiana and Missouri is an effectual refutation of this point.

According to the Constitution the sovereign authority over the Territories is vested in the people of the United States and must therefore be exercised by Congress. Neither a Territorial Legislature nor the people of a Territory have a legal right to do anything outside of the specific grant of power conveyed by Congress. Now the Territorial Legislature, which was the only law-making agency in the Territory of Kansas, received its grant of power from Congress in the Kansas-Nebraska Act, Section 24 of which says, "The legislative power of the Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of 'this act" (4). The same power was granted to the Legislature in the acts organizing the Territories of Wis-

(1). Cong. Globe,1 session, 35 Cong., 612.

(2). Douglas in Senate, Dec. 9, 1857.

(3). Smith of Tenn. in H. of R., Cong. Globe,1 Sess., 35Cong.,891.

(4). U. S. Statutes At Large, X, 285.

consin and Minnesota among others (1), but special enabling acts were nevertheless passed for Wisconsin and Minnesota. Congress apparently did not regard the calling of a constitutional convention as a "rightful subject of legislation". The act which organized the Territory of Michigan gave the Legislature "authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared" (2). A constitution framed by a convention called by that Legislature was sent to Congress but a memorial from the Legislature accompanying the constitution and requesting admission was regarded by the Senate "in no other light than as the voluntary act of private individuals" (3). The Senate thus interpreted the grant of power made to the Territorial Legislature of Michigan. Yet it would scarcely be possible to construe "all laws for good government" as less extensive in scope than " rightful subjects of legislation", for certainly nothing could be a "rightful subject of legislation" which did not conduce to "good government". So the powers of the Territorial Legislature of Kansas were no greater than those of the same body in Michigan and the resolution of the Senate quoted above with regard to the latter has its weight. Buchanan said of the Michigan Territorial Legislature, "No Senator will pretend that it had any right whatever to pass a law enabling the people to elect delegates to a convention for the purpose of framing a State con-

(1). Davis of Md., H. of R., Cong. Globe, 1Sess., 35Cong., App., 262.

(2). U.S. Statutes At Large, I, 52.

(3). Benton, Abridgment of Debates, XIII, 80.

stitution. It was an act of usurpation on their part " (1). From whatever point of view we regard it there seems to be no good evidence that the people of Kansas had any legal right to form a constitution. In common with all the people of the country they enjoyed the right of petition and could petition for admission under any conditions. The Lecompton constitution was without legal warrant and occupied merely the status of a petition which Congress was fully at liberty to receive or reject. More than one state had been admitted without an enabling act but only because Congress had judged it expedient and just to all.

In this point of view it is unnecessary to inquire very far into the legality of the elections of December 21 and January 4 for however legal they were is not germane to the question of admission they could not make an illegal document legal. But if the Legislature had no right to initiate the process of forming a constitution by calling a convention, it had no right to take any part whatever in the process. Therefore the election of January 4 was not legal. Likewise, the elections ordered by an illegal convention cannot be considered legal. But all these elections might be taken by Congress for what they were worth as expressions of the popular will of Kansas.

The objection upon which the enemies of the Lecompton constitution laid most stress had reference to the matter of submission. Douglas declared that the principle of the Kansas-Nebraska Act was to place the question of slavery in precisely the same position

(1). Benton, Abridgement of Debates, XIII, 81.

that all other matters of local and domestic control occupied (1). History, however, is unfriendly to this interpretation for in the enabling act for Minnesota passed in 1857, and so subsequently to the Kansas-Nebraska Act, a provision had been inserted calling for submission (2). There is absolutely nothing in the language of the Kansas-Nebraska Act which calls for a submission of the Lecompton constitution. To be sure it says that "the people" shall be left to form and regulate their domestic institutions as they please, but that does not call for a New England town meeting; it simply means that the people of Kansas shall enjoy self-government, but it does not prescribe the agency through which that self-government shall work. Indeed, as originally reported by Douglas from the Committee on Territories it read, "All the questions appertaining to slavery in the Territory, and in the new states to be formed therefrom, are to be left to the decision of the people residing therein through their appropriate representatives" (3). Buchanan's argument that "domestic institutions" meant only slavery was no less fallacious than his contention that the slavery issue must be submitted to a popular vote, for slavery is an "institution", not "institutions", and "domestic" does not mean pertaining to the family, but state or local as opposed to federal or national.

An examination of the past nevertheless disclosed the fact that popular ratification of constitutions was fast becoming a fixed po-

(1). Cong. Globe, 1 session, 35 Cong., 15.

(2). U.S. Statutes At Large, XI, 166.

(3). Cong. Globe, 1 session, 35 Cong., 1280.

licy. The facilities at hand make it impossible to work out this matter conclusively. Authorities differ widely, but since it must already have become evident that we are accepting the anti-Lecompton point of view, we shall not be accused of prejudice if we accept the statement of Senator Green of Missouri (1) who introduced Senate Bill No. 161. Out of seventeen states admitted up to 1851 six of the first nine, he says, came in with constitutions of which "there is no evidence that they were submitted to a vote of the people". Such a statement obviously means nothing one way or the other. Authority is cited to the effect that the constitutions of the other three were not submitted to the people. Of one of the last eight he says again, "there is no evidence that the constitution was submitted to a vote of the people"; of another , "the constitution had not been submitted to the people previous to her application with a constitution"; of a third the bare assertion was made that "the constitution was not submitted to the people". So while the fact of no submission is substantiated in only three of seventeen cases, five of the last eight are openly admitted to have been submitted. It therefor appears that by not referring the fruits of its labors to the peoplethe Lecompton convention was running counter to an established custom.

Laying aside the matter of custom it is plain that submission is the only sound political principle. It is objected to because to vote either way the voter must go partly against his convictions but this may be obviated by submitting the constitution in sections.

(1). Cong. Globe,1 session, 35 Cong., 46.

It is also possible that the average citizen will not vote very intelligently on a constitution, yet there is no doubt that it is a far more dangerous doctrine to allow a single body to act without a check in framing the fundamental law of a people. When we remember in addition the repeated pledges of submission which had been given to the people of Kansas, it seems that every consideration of precedent, sound politics and fairness demanded the retification of the Lecompton constitution by the people.

The convention had not, however, refused to submit any part of constitution but, as we have seen, Article VII in it was referred to thepeople on December 21. What really did that amount to? Did the ultimate existence or non-existence of slavery in Kansas depend upon the presence of Article VII in the constitution? We maintain that it did not, Leverett M. Spring (1) and Senator Bayard (2) to the contrary notwithstanding. Article VII allowed slavery to exist in Kansas and slaves to be brought into the state. Without Article VII the right of property in slaves not already in the Territory was not guaranteed. It is plain that the matter of interstate slave trade was referred to the people. Nothing more was. With Article VII struck out slavery was perpetuated in Kansas for "the right of property in slaves now in the Territory shall in no manner be interfered with". The issue of those slaves would be slave and slavery would be a fixture in Kansas. The lambs, pigs, calves, and colts raised by a man's sheep, hogs, cattle and horses

(1). Spring, 223.

(2). Cong. Globe, 1session, 35 Cong., App., 185.

are undoubtedly his property. The returns from his money invested in railroad bonds be it six or ten per cent is his own. To deprive one of the natural normal increase of his property is an interference with his property rights. The Charleston Mercury, a violent pro-slavery paper, said on November 26, 1857: "It is clear that the pro-slavery party have completely outwitted Walker and Stanton and the whole Black Republican party. We have no doubt that the first part of the clause seemingly abolishing slavery was inserted for the benefit of just such people in the North as the editors of the Washington Union" (1). The correspondent of the Jackson Mississippian wrote from Lecompton on November 27 :"It is in fact but a question of the future introduction of slavery that is in controversy; and yet it furnishes our friends in Congress a basis on which to rest their vindication of the admission of Kansas as a state under the Lecompton constitution, while they would not have it sent directly from the convention. It is the very best proposition for making Kansas a slave state that was submitted for the consideration of the convention" (2). Taking Senator Bayard's own words, that "the Legislature of every state which has abolished slavery has always guarded and protected the sacred right of property in existing slaves precisely as Kansas did" (3), why, we ask, did Pennsylvania, Connecticut, Rhode Island, New York and New Jersey pass laws making

(1). Goodwin in H. of R., Cong. Globe,1 Sess., 35 Cong.,847.

(2). Foster in H. of R., Ibid, 1045.

(3). Cong. Globe,1 session, 35 Cong., App., 185.

children of slaves born after a certain date free(1)? It is evident that the Legislatures of these states believed that issue of slaves are slave unless explicitly declared to be free. Our conclusion is therefore supported by common sense, the admissions of southern papers and the interpretation of northern Legislatures. With Article VII gone no powers of emancipation were vested in the Legislature so slavery had a permanent constitutional existence in Kansas.

Opponents of the Lecompton constitution dwelt long upon the provisions it contained for amendment. The General Assembly was given power to call a convention for the purpose of offering amendments after 1864. Douglas contended that "when a constitution provides for its own change at a particular time and in a particular manner, that excludes all other times and all other modes" (2). The Lecompton constitution was thus held to be impossible of amendment before 1865. In reply was quoted the extract from its bill of rights that "the people have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper". Such an argument was fatal to the whole constitution for a large majority of "the people" had abolished it "in such manner as they thought proper" on January 4, 1858. Douglas' argument simply as an abstract political question may be both attacked and defended by high authority (3). The answer to it is unimportant for our purpose. If, how-

(1). Boyce in H. of R., Cong. Globe, 1 session, 35 Cong., 1359.

(2). Cong. Globe, 1 session, 35 Cong., 50.

(3). Jameson, 529.

ever, a majority concluded to amend before 1864 there is little doubt that it would have been amended. That the change if relating to slavery would have been peacefully effected is very doubtful. So long as Kansas remained a Territory slavery according to the Dred Scott decision might exist. The South would scarcely have been so anxious to turn a slave territory into a free state (for that was certain to be the outcome) if it had really believed and been ready to acquiesce in the doctrine of change by a majority. Admission would therefore have been inexpedient.

Some members of Congress charged that the Lecompton constitution was not republican and for that reason should not be received since it is the constitutional duty of Congress "to guarantee to every state a republican form of government". While some features of the Lecompton constitution were not consonant to the will of the people, it cannot be said that the "form of government" was contrary to their desire. Lack of population was rarely urged against admission although the English Bill openly recognized that it was a valid objection. Complaint was also made that free negroes were not to be permitted to live in the state under any circumstances, and the extravagant demands of the ordinance as an equivalent for the privilege of taxing government lands were an additional source of opposition. In conclusion we may say that it would undoubtedly have been wrong to admit Kansas with the Lecompton constitution for considerations of justice, fairness and expediency were altogether against it. Simply the one fact that a large majority of the inhabitants were opposed is decisive of the whole question. As Governor Walker said : "Any attempt to force this constitution upon the

people of Kansas will, I fear, be attended by civil war" (1).

(1). Adrain in H. of R., Cong. Globe, 1 sess., 35Cong., 1225.

C H A P T E R VII.

The English Bill.

The committee of conference upon the disagreeing votes of the two Houses on Senate Bill No. 161 reported on April 23, 1858 the well-known English Bill (1). After referring briefly to the Lecompton constitution and the accompanying ordinance it stated that "said ordinance is not acceptable to Congress and it is desirable to ascertain whether the people of Kansas concur in the changes in said ordinance hereinafter states and desire admission as herein proposed". Six propositions, the same as those found in the Crittenden-Montgomery substitute, were then to be offered to the people for their free acceptance or rejection. Those propositions, it will be remembered, were to give the state sections 16 and 36 in each township for public schools, 72 sections for a State University, ten sections for a capitol, all salt springs not exceeding twelve in number with six sections adjoining each, and five per cent of the net proceeds from the sale of public lands, but the lands of the United States must never be taxed. If these conditions were accepted the President was empowered to announce by proclamation the admission of Kansas as complete, but if they were rejected it "shall be deemed that the people of Kansas do not desire admission with said constitution under the conditions set forth in said proposition", in which case they might form a constitution and apply for admis-

(1). Cong. Globe, 1 session, 35 Cong., 1765-66.

sion whenever and not before it should appear from a census that the population was equal to the number required for a member of the House of Representatives. It amounted simply to a submission of the Lecompton constitution with a threat of keeping Kansas in the territorial condition as a consequence of its rejection.

So frequently the English Bill is spoken of as an effort to bribe Kansas to accept the Lecompton constitution by offering her an unusually large amount of public land. That is a mistake. Since 1848 it has been the rule to reserve sections 16 and 36 in each township for public schools (1). That was provided for in the Kansas-Nebraska Act and the people of Kansas ought to have understood that whenever admitted they would receive two sections from each township. The real charge which can be brought against the English Bill is that it prescribed different qualifications for the admission of slave and free states. Kansas might come in slave regardless of population but if free she must wait until she had a certain number of people. This was patently unjust. If the people of Kansas had a right to vote upon their constitution at all they had a right to do it without any impending consequences.

The report was not concurred in by Seward and Howard (2). The other four seemed to have done the work mostly by themselves. Howard said that he was probably the only Republican of the House who saw the report before it was made but that several Democrats had (3). Seward stated that only two hours were given Howard and him

(1). Adams, Finance,258.

(2). Cong. Globe,1 session, 35 Cong., 1765.

(3). Ibid, 1767-68.

to examine it (1). But there appears to have been more than unfairness; the battle was so close in the House that official corruption was resorted to. Haskin, a Douglas Democrat of New York, wrote to Senator Wilson that Senator Slidell offered him a township of land if he would change his views. "Patronage and gifts were freely given" to swing the anti-Lecompton Democrats again into line (2).

After a week's debate in which a large number of thin fallacious arguments were advanced the final vote was taken. The Senate passed the bill by a vote of 31 to 22 (3). Not a man changed sides from the former vote except Pugh, whose instructions did not apply to the present question, so he might follow his own convictions. The House agreed with the Senate 113 to 102 (4). A majority of the anti-Lecompton Democrats remained with Douglas on the vital issue that the constitution must be fairly submitted to the people, but nine of them were able so to salve their consciences that the English Bill appeared to them as "substantially" a submission. Those nine were six Ohioans, English and Foley of Indiana, and Owen Jones of Pennsylvania. Gilmer of North Carolina naturally turned back because he wanted a slave state if possible. Quitman of Mississippi voted in the negative because he regarded the bill as a submission. On August 2, 1858 the election authorized occurred and

(1). Cong. Globe, 1 session, 35 Cong., 1880.

(2). Wilson, Slave Power, II, 564-65.

(3). Cong. Globe, 1 session, 35 Cong., 1899.

(4). Ibid, 1905-6.

the people of Kansas spurned the base proposal to fasten slavery upon the soil of their state by a vote of 11300 to 1788 (1).

Such was the end of the Lecompton constitution. To many southern men of principle its support must have been a bitter pill, yet they had to do it. Senator Hammond of South Carolina said in a speech in his own state the same year : "I confess my opinion was that the South herself should kick that constitution out of Congress. But the South thought otherwise" (2). Douglas' theory of popular sovereignty had failed, years of experience had demonstrated that Congress could not deal with slavery in the Territories in an amicable way, the course of the South had cost her the co-operation of Douglas and the North, and there remained only the arbitrament of the sword.

(1). Wilder, 188.

(2). Spring, 236.

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